(3) Single Bench

IN THE HON'BLE HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition No. 391 /2005

PETITIONER :- Ram Vilas Singh aged not known, S/o Shri Sitaram Singh, R/o. near Banjari Mandir, Ranwabhatha, Bhanpuri Raipur, Tah. & Distt. Raipur.

~~DEFENDANT~~

VERSUS

RESPONDENT :- Smt. Alpana Devi aged about 37 years, W/o. Shri Prafulla Kumar Majethiya, R/o. Geeta Nagar, Chaube Colony Raipur, through attorney holder Shri Jayanti Lal Majethiya S/o Shri Durlabhjee Bhai Majethiya, R/o. ~~Gak~~ Geeta Nagar Chaube Colony, Raipur.

~~PLAINTIFF~~

P.R. No. 312/05
Presented by Shri K.R. Vaidya
dated 31-1-05

WRIT PETITION UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA.

XI-HC-78

(46)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक W.P. No. 391/2005 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	6-11-2006 Shri Malay Kumar Bhaduri, Advocate for the petitioner. Shri Satyendra Sahu, Advocate for the respondent. The instant petition is directed against the impugned order dated 10-1-2005 passed by Second Additional Civil Judge Class I, Raipur in Civil Suit No. 376-A/2004, which has been filed along with the petition whereby the learned Civil Judge while deciding application under Section 151 of the Code of Civil Procedure of the plaintiff has proceeded under Order 8 Rule 10 of C.P.C. against the defendant-petitioner and posted the case for recording of evidence of the plaintiff without considering the written statement filed by the petitioner on 5-3-2004. It is held in the above order that number of opportunities have been given to the defendant to file written statement and ultimately last opportunity for filing written statement by 5-4-2004 was given. The defendant thereafter on 5-3-2004 filed written statement, however, the written statement so filed did not correspond to the requirement of Order 6 Rules 14 and 15 of C.P.C. as the same was not dully signed by the defendant and was not dully verified and, therefore, the same could not be termed as written statement and thus considering the provisions of Order 8 Rule 1 of C.P.C. whereunder written statement is to be filed within 90 days of service of summons, the impugned order has been passed. Learned counsel for the petitioner submits that the written statement was filed by the defendant on 5-3-2004 within the time allowed by the trial Court, however because the defendant was not available, the same did not bear signature of the defendant. The defect, if any, was curable and in the aforesaid circumstances, the Court below ought to have given an opportunity to the defendant to cure the above defect in the ends of justice and, therefore, the impugned order calls for interference.	

P.T.O.

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(47)

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On the other hand, learned counsel for the respondent relying upon the judgment in the matter of ***Kailash –v- Nanhku and others*** reported in ***(2005)4 SCC 480*** argued that the extension of time for filing written statement beyond 90 days may be granted only by way of exception and for reasons to be recorded in writing and where the Court is satisfied that it is because of laxity or gross negligence on the part of defendant or his counsel, it cannot be extended.

I have heard learned counsel for the parties. I have perused the impugned order.

From perusal of the order, it is evident that the written statement was filed on 5-3-2004 i.e. within the period allowed by the Court below to file written statement, however, the same was not taken on record or not considered to be written statement simply because it did not bear signature of the defendant. In my view, the Court below ought to have allowed the defendant to cure the defect in the written statement and decided the suit only on merit and, therefore, in the aforesaid reasons, the instant petition is allowed. The Court below shall allow the defendant to cure the defect in the written statement filed by on 5-3-2004, and thereafter he shall take the same on record and proceed further after appropriately imposing cast for the laxity on the part of the defendant.

Sd/-
Dhirendra Mishra
Judge

P.T.O.